

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARY LYNN SMITH,

Defendant.

:

:

Case No. 3:05cr162

:

JUDGE WALTER HERBERT RICE

:

NOTICE TO DEFENDANT WHO HAS FILED MOTION FOR JUDICIAL
NOTICE TO DISMISS FOR LACK OF CRIMINAL JURISDICTION
(DOC. #79); RESPONSE REQUESTED OF DEFENDANT

Defendant herein has filed a motion, pro se, moving this Court to take judicial notice, pursuant to Fed R. Evid. 201(b), as to a jurisdictional fact that the offense to which he was judged guilty in Count 2 of the Indictment was committed outside the boundaries of the United States and, accordingly, that this Court was without the subject matter jurisdiction to hear his criminal case.

Given that the judgment in Defendant's criminal case is long since final, this Court lacks the jurisdiction to entertain the Defendant's motion, absent a motion filed pursuant to 28 U.S.C. § 2255, the only appropriate vehicle for a federal criminal defendant to challenge the validity of his judgment pursuant to which he has been held in custody. Accordingly, and, further, pursuant to the decision of

the Sixth Circuit Court of Appeals in In re Shelton, 295 F.3d 620, 622 (6th Cir. 2002), this Court directs the Defendant to advise the undersigned, within 20 days from date, whether he wishes to proceed with his motion, recharacterized as a motion under § 2255. Such a recharacterized motion may be Defendant's one and only chance to seek relief under § 2255; accordingly, he is given the opportunity either to pursue his motion, recharacterized as above stated, or to withdraw the motion. Should he wish his motion to be recharacterized, same will be so filed, the Government will respond and the Court will render a ruling upon same in due course.

May 19, 2011



WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

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Clerk, United States Court of Appeals for the Sixth Circuit